

In the Matter of the Appeal by) SPB Case No. 28948
)
 ROBERT A. McCOY) **BOARD DECISION**
) (Precedential)
 From dismissal from the position)
 of Medical Technical Assistant) **No. 93-**
 with the Chuckawalla Valley State)
 Prison, Department of Corrections) January 12, 1993
 at Blythe.)

Before Carpenter, President; Burgener and Ward, Members.

This case is before the State Personnel Board (Board) for determination after the Board rejected the proposed decision of the Administrative Law Judge (ALJ) in the appeal of Robert A. McCoy (appellant) from dismissal from the position of Medical Technical Assistant at Chuckawalla Valley State Prison, Department of Corrections at Blythe (Department). The Board rejected the proposed decision of the ALJ which modified the dismissal to a 90-day suspension.

The adverse action was based on charges that appellant refused to respond to orders from Department's correctional officers to render medical assistance to an inmate who was dizzy, sweating, and complaining of a headache.

After a review of the entire record, including the transcripts and briefs submitted by the parties, and having listened to oral arguments, the Board rejects the proposed decision of the ALJ modifying the penalty to a 90-day suspension and, for the reasons

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set forth in this decision, imposes a one-year suspension upon the appellant.

FACTUAL SUMMARY

Appellant began work with the State of California in 1984. He became a Medical Technical Assistant (MTA) for the Department on June 8, 1987. Appellant has one prior adverse action (an official reprimand) for leaving his post without permission.

On the morning of September 9, 1990, an inmate named Weathersby approached the "B-3" housing unit claiming to be dizzy and having a headache. The officer on duty could see that Weathersby was sweating profusely and could not walk properly. The officer, having no medical training, immediately telephoned the appellant, an MTA. The officer described Weathersby's condition over the telephone to the appellant, including the fact that Weathersby was dizzy, sweating and complaining of a headache. The officer told appellant that he should come attend to Weathersby.

Appellant told the officer that he would not go to the housing unit where Weathersby had registered his complaint. Specifically, the officer testified at the hearing that the appellant said to him, "If that inmate wants to be seen, he'd better walk his ass on over here" and then hung up. The evidence further shows that the officer called the appellant back, and again, the appellant hung up on him.

The officer called his sergeant and explained the situation to him. The sergeant thereafter immediately called his lieutenant. The lieutenant advised the sergeant to go to appellant and order

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the appellant to go to Weathersby and examine him. The sergeant then walked over to where the appellant was located at that time and ordered the appellant to attend to Weathersby. Appellant responded that he had two yards to run and did not have time.

Within about fifteen minutes, a fellow inmate brought a wheelchair to Weathersby at housing unit B-3 and brought him to where the appellant was located at B clinic.¹ Appellant ultimately treated Weathersby. It was not until the next day, that a physician diagnosed Weathersby's condition as a severe migraine headache.

Appellant claims that he had good reasons for initially refusing to attend to the inmate. He claims that at the time this matter arose, he was assigned to cover two separate prison yards and that shortly before the Weathersby incident, he had been called to assist an inmate who appeared to have a broken leg. Appellant claims that he could not attend to both requests at once, and therefore had to exercise his professional judgment in determining which patient more urgently needed his attention. He believes that inmate Weathersby's symptoms were attributable to the fact that the inmate had been outside and the temperature was over 100 degrees. He further testified that in his opinion, the inmate with the broken leg was the more urgent of the two situations. There is no

¹The ALJ found that the wheelchair had been arranged for by appellant, and relied on that finding in her proposed decision as mitigating evidence in the appellant's favor. However, a review of the record does not reveal that the appellant was responsible for the arrival of the wheelchair. In fact, appellant denies he ordered the wheelchair.

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evidence that appellant ever told any of the correctional officers that he was about to attend to an inmate with a broken leg.

Appellant was subsequently charged with violations of Government Code 19572 subsections (d) inexcusable neglect of duty; (e) insubordination; (f) dishonesty; (m) discourteous treatment of the public or other employees; (q) violation of this part or board rule and (t) other failure of good behavior during or outside of duty hours which is of such nature that it causes discredit to the appointing authority or the person's employment.

ISSUE

What is the proper penalty for the charged misconduct?

DISCUSSION

The ALJ found that the testimony of the Department's witnesses was more credible than that of appellant. Thus, the ALJ found that the appellant was told (more than once), and subsequently ordered by the Department's officers, to attend to Weathersby. Furthermore, the ALJ determined that the appellant refused the order in a crude and disrespectful manner. The ALJ also found that appellant's refusal to attend to inmate Weathersby was without justification.

After a review of the record, the Board finds substantial evidence to support the ALJ's findings of fact.² The record reflects ample evidence to indicate that appellant erred in failing to respond immediately to inmate Weathersby.

²With the exception of the factual findings identified in footnote 1.

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The chief medical officer testified that Weathersby's symptoms indicated a multiple of possibilities, including a cardiac emergency, and that under the circumstances, he believed an emergency medical response was warranted.

Similarly, a senior MTA with 12 years experience, testified that given inmate Weathersby's symptoms, he would have personally responded to the inmate and treated the situation as a medical emergency.

Even appellant's own witness, Ms. Mary Berahmand, a fellow MTA, testified that an MTA's duty is to respond as fast as he or she can given information that would indicate an inmate may be ill with a possible heart condition. When asked how Ms. Berahmand herself would have responded to the situation, she testified that she felt it would have warranted a medical emergency response. As to the insubordination issue, Ms. Berahmand testified that as an MTA, she would not refuse a direct order from a sergeant or lieutenant.

The Board finds appellant's actions constituted inexcusable neglect of duty, insubordination, and discourteous treatment of other employees.³ The only issue left to be determined is that of the appropriate penalty.

The Department sought to dismiss the appellant by issuing the instant adverse action. The ALJ subsequently modified the penalty

³There was insufficient evidence to establish a violation of Government Code section 19572(f) (dishonesty). The charge of "other failure of good behavior, etc." under subdivision (t) is considered duplicative of violations already established.

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to a 90-day suspension, finding that the penalty of dismissal was too severe, at least in part, because of the appellant's action in sending a wheelchair for Weathersby. The Board finds that the appropriate penalty lies somewhere in between.

In Skelly v. State Personnel Board (1975) 15 Cal.3d 194, the California Supreme Court noted that while an administrative body has broad discretion with respect to the imposition of penalty, it is still limited in exercising its judicial discretion. The Skelly court found that in exercising that discretion, the administrative body should take a number of factors into consideration.

"...[W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, [h]arm to the public service. (Citations.) Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. (Skelly at p. 218)

The Board finds appellant's insubordination to be the most serious of the charges under the circumstances, and sufficient justification in itself to impose a one-year suspension on the appellant.

Appellant was employed as a medical professional working with the Department. He received a request for medical assistance, and later a direct order from a sergeant to attend to a sick inmate. Appellant refused the request. Insubordination to a direct order by a superior to attend immediately to a potentially critically ill inmate constitutes serious misconduct. Repetition of such misconduct could have lethal consequences and result in grave harm to the public service.

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Furthermore, it appears that a severe penalty must be imposed upon the appellant because of the likelihood of the incident reoccurring. Even at the oral argument before the Board, the appellant still did not understand that he had a responsibility to follow an order from a sergeant or lieutenant to render medical assistance to an inmate, even if he did not completely agree with the reasoning behind the order. Appellant must learn that he can not simply choose to disobey an order to attend to an inmate.

Not only was the appellant mistaken in disobeying the order, but there is sufficient evidence of inexcusable neglect of duty in that appellant should not have prioritized an inmate with a broken leg over the undiagnosed, but potentially serious, illness of Weathersby. Furthermore, appellant erred in failing to disclose to his superiors when ordered to attend to Weathersby, that he was treating an inmate with a broken leg. This failure to communicate his dilemma of which inmate to treat also constituted inexcusable neglect of duty in that appellant's superiors were forced into making a decision as to how to deal with inmate Weathersby without full information as to the reasons for appellant's unavailability.

While we believe that the appellant's conduct warrants a serious penalty, we decline to uphold the Department's decision to dismiss the appellant. An evaluation of the circumstances surrounding the misconduct reveals that the appellant was not intending to harm Weathersby or cause trouble; rather he appeared to truly believe that he was doing what was best for the inmates, caring for them one at a time in priority of urgency of the

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illness. We trust that appellant has learned from his mistake and will not only exercise his best medical judgment, but will also conscientiously provide full information to and ultimately follow the orders of his superiors in the future.

CONCLUSION

For the reasons set forth herein, the Board modifies the original penalty of dismissal to a one-year suspension.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is ORDERED that:

1. The adverse action of dismissal is modified to a one-year suspension;

2. The Department of Corrections shall pay to appellant all back pay, benefits and interest that would have accrued to him had he not been dismissed;

3. This matter is hereby referred to an Administrative Law Judge and shall be set for hearing on written request of either party in the event the parties are unable to agree to the amount of salary and benefits due appellant.

4. This decision is certified for publication as a Precedential Decision (Government Code section 19582.5).

STATE PERSONNEL BOARD*

Richard Carpenter, President
Clair Burgener, Member
Lorrie Ward, Member

*Vice-President Alice Stoner did not participate in this decision.
There is one vacant position on the Board.

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on January 12, 1993.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board